

## **REMARKS**

The non-final Office Action mailed October 16, 2009 has been received and reviewed. The Examiner indicated that claims 91, 94, 97, 102, 103, 110, 111, 129 and 132-138 are withdrawn from consideration. Applicant agrees that all of these claims except claims 133 and 134 were subject to the previous restriction and thus withdrawn.

### **THE SECTION 112 REJECTION**

Claims 104-108 were rejected under 35 U.S.C. §112 for lack of sufficient antecedent basis. Claims 104-111 have been amended to correct this error. Applicant submits that all of the pending claims are in proper form pursuant to 35 U.S.C. §112.

### **THE SECTION 103 REJECTION**

Claims 89, 90, 104-109 and 112-128 were rejected under 35 U.S.C. §102(e) as being anticipated by Machan. Claims 104-109 were also rejected under 35 U.S.C. §103(a) as being unpatentable over Machan. Claims 130 and 131 were rejected under 35 U.S.C. §102(e) as being anticipated by Schwartz. Claims 92, 93, 95, 96 and 98-101 were rejected under 35 U.S.C. §103(a) as being unpatentable over Machan in view of Kunz. Claims 130 and 131 were also rejected under 35 U.S.C. §103(a) as being unpatentable over Machan in view of Schwartz. Claims 139-141 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schwartz.

Applicant notes that claims 104-109 are both anticipated and made obvious by Machan. Applicant assumes that this is an error; however, Applicant will address both rejections. Applicant also notes that claims 130 and 131 are made obvious by Machan and Machan in view of Schwartz. Applicant also assumes that this is an error; however, Applicant will address both rejections. Applicant further notes that on page 4 of the Office Action the Examiner made reference to claims

224 and 225 and to Ashton '598. Applicant assumes that this is an error since there are no claims 224 and 225 pending in the present application and Ashton '598 was not indicated as a reference being relied upon to reject any of the pending claims. Applicant assumes for purposes of this amendment that the reference to Ashton '598 was supposed to be a reference to Kunz and that the reference to claims 224 and 225 should have been to claims 92, 93, 95, 96 and 98-101.

Claim 89 has been amended to require that Trepidil be one of the biological agents coated on the body of the expandable intraluminal graft. Machan does not have any teachings regarding the use of Trepidil as a biological agent. As such, Machan cannot anticipate or make obvious the limitations of independent claim 89 and all of the claims dependent thereon.

The Examiner cited Schwartz against several of the claims. Schwartz claims priority back to Application Serial No. 09/293,994 filed April 19, 1999. The present invention claims priority to one application that was filed prior to the April 19, 1999 priority date of Schwartz, namely US 6,206, 916. The '916 patent discloses a stent that includes Trepidil in combination with one or more other biological agents. The '916 patent also disclose the use of a material to secure the one or more biological agents to a stent. As such, Schwartz is not prior art to independent claim 89 and many other claims pending in the present invention.

The Examiner cited Kunz in combination with Machan to support a rejection of several of the claims. Several of the claims include the limitation that the biological agent includes both Trepidil and GM-CSF. Some other pending claims also required that the biological agent include additional agents. Applicant submits that there are no teachings in Kunz and Machan that the combination of Trepidil and GM-CSF would impart any benefit to a patient. Furthermore, Kunz discloses many different types of biological agents that can be used. Likewise, Machan discloses

several biological agents that can be used. Therefore, based on the teachings of Kunz and Machan, there are millions of drug combinations that could be used. Consequently, it would not be obvious to try the Trapidil and GM-CSF combination defined in several of the pending claims, especially since Machan does not disclose the use of Trapidil and Kunz does not disclose the use of GM-CSF.

Applicant submits that the claims pending in the above-identified patent application are all directed to the elected species and are in allowable form, and a notice to such effect is earnestly solicited.

Respectfully submitted,  
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